

AMENDED IN SENATE APRIL 20, 2006

AMENDED IN SENATE APRIL 6, 2006

SENATE BILL

No. 1210

Introduced by Senator Torlakson

January 26, 2006

An act to amend Sections 1250.410, 1255.040, 1255.410, 1255.450, and 1255.460 of, to add Section 1263.025 to, and to repeal Sections 1255.420 and 1255.430 of, the Code of Civil Procedure, to add Section 1091.6 to the Government Code, and to amend Section 33333.2 of, *and to add Section 33392.5 to*, the Health and Safety Code, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SB 1210, as amended, Torlakson. Eminent domain.

(1) Existing law governing settlement offers in eminent domain proceedings authorizes the recovery of litigation expenses under certain circumstances. Existing law provides that if a court finds, on motion of the defendant, that the offer of the plaintiff was unreasonable and the offer of the defendant was reasonable in light of the evidence admitted and the compensation awarded in the proceeding, then the costs allowed shall include the defendant's litigation expenses.

This bill would provide that an offer of the plaintiff shall be deemed unreasonable if the offer is lower than the amount ordered as compensation by 10% or more. The bill would also define litigation expenses to mean the party's reasonable attorney's fees and costs, including reasonable expert witness and appraiser fees.

(2) Existing law authorizes the plaintiff to make an ex parte application to the court to take possession of property prior to

judgment and sets forth the procedures the plaintiff must follow. Existing law authorizes any defendant or occupant of the property to move for relief from the order if the hardship to the defendant of having possession taken at the time specified is substantial.

This bill would revise and recast those provisions. Among other changes to those provisions, the bill would delete provisions authorizing a plaintiff to make an ex parte application to the court for possession, and would instead authorize the plaintiff to apply to the court and would provide for a noticed hearing. The bill would require the plaintiff to serve a copy of the application on the record owner and on the occupants of the property within specified time periods. The bill would authorize a defendant or occupant of the property to contest the application and seek a hearing on the application regardless of whether the hardship of having possession taken at the time specified in the order is substantial. The bill would make other, related changes.

(3) The Eminent Domain Law requires a condemnor to have the property appraised by an expert before depositing with the State Treasury the probable amount of compensation that will be awarded in a condemnation proceeding.

This bill would require a public entity that exercises the power of eminent domain to offer to pay the reasonable costs of an independent appraisal ordered by the owner of the property. This appraisal would be required to be conducted by an appraiser licensed by the ~~Department~~ *Office* of Real Estate Appraisers.

(4) Existing law prohibits public officers and employees from being financially interested in any contract made by them in their official capacity or by any body or board of which they are members.

This bill would prohibit *an officer who is also a member of a the governing board body of a public entity from voting on any matter affecting* an organization that has an interest in, or to which the public entity agency may transfer an interest in, property ~~taken through that the public agency may acquire by eminent domain proceedings by that public entity and on whose board of directors the member sits from voting on any matter affecting that organization.~~

(5) The Community Redevelopment Law establishes a time limit, not to exceed 12 years from the adoption of the redevelopment plan, for commencement of eminent domain proceedings to acquire property within the project area. That law provides that this time limitation may be extended only by amendment of the redevelopment plan.

This bill would provide that this time limitation may be extended only if the redevelopment agency ~~in a new resolution of necessity~~ finds, based on substantial evidence ~~in the record~~, that substantial blight still exists in the area and ~~the acquisition of the parcel is necessary and will directly and substantially assist in eradicating the remaining~~ *this blight cannot be eliminated without the use of eminent domain.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1250.410 of the Code of Civil
2 Procedure is amended to read:
3 1250.410. (a) At least 20 days prior to the date of the trial on
4 issues relating to compensation, the plaintiff shall file with the
5 court and serve on the defendant its final offer of compensation
6 in the proceeding and the defendant shall file and serve on the
7 plaintiff its final demand for compensation in the proceeding.
8 The offer and the demand shall include all compensation required
9 pursuant to this title, including compensation for loss of
10 goodwill, if any, and shall state whether interest and costs are
11 included. These offers and demands shall be the only offers and
12 demands considered by the court in determining the entitlement,
13 if any, to litigation expenses. Service shall be in the manner
14 prescribed by Chapter 5 (commencing with Section 1010) of
15 Title 14 of Part 2.
16 (b) If the court, on motion of the defendant made within 30
17 days after entry of judgment, finds that the offer of the plaintiff
18 was unreasonable and that the demand of the defendant was
19 reasonable viewed in the light of the evidence admitted and the
20 compensation awarded in the proceeding, the costs allowed
21 pursuant to Section 1268.710 shall include the defendant's
22 litigation expenses. As used in this subdivision, an "offer of the
23 plaintiff" shall be deemed unreasonable if that offer is lower than
24 the amount ordered as compensation by 10 percent or more.
25 (c) In determining the amount of litigation expenses allowed
26 under this section, the court shall consider the offer required to
27 be made by the plaintiff pursuant to Section 7267.2 of the
28 Government Code, any deposit made by the plaintiff pursuant to

Chapter 6 (commencing with Section 1255.010), and any other written offers and demands filed and served before or during the trial.

(d) If timely made, the offers and demands as provided in subdivision (a) shall be considered by the court on the issue of determining an entitlement to litigation expenses.

(e) As used in this section, “litigation expenses” means the party’s reasonable attorney’s fees and costs, including reasonable expert witness and appraiser fees.

SEC. 2. Section 1255.040 of the Code of Civil Procedure is amended to read:

1255.040. (a) If the plaintiff has not made a deposit that satisfies the requirements of this article and the property includes a dwelling containing not more than two residential units and the dwelling or one of its units is occupied as his residence by a defendant, the defendant may serve notice on the plaintiff requiring a deposit of the probable amount of compensation that will be awarded in the proceeding. The notice shall specify the date by which the defendant desires the deposit to be made. The date shall not be earlier than 30 days after the date of service of the notice and may be any later date.

(b) If the plaintiff deposits the probable amount of compensation, determined or redetermined as provided in this article, on or before the date specified by the defendant, the plaintiff may obtain an order for possession that authorizes the plaintiff to take possession of the property 30 days after the date for the deposit specified by the defendant or any later date as the plaintiff may request.

(c) Notwithstanding Section 1268.310, if the deposit is not made on or before the date specified by the defendant or such later date as the court specifies on motion and good cause shown by the plaintiff, the compensation awarded to the defendant in the proceeding shall draw legal interest from that date. The defendant is entitled to the full amount of such interest without offset for rents or other income received by him or the value of his continued possession of the property.

(d) If the proceeding is abandoned by the plaintiff, the interest under subdivision (c) may be recovered as costs in the proceeding in the manner provided for the recovery of litigation expenses under Section 1268.610. If, in the proceeding, the court

1 or a jury verdict eventually determines the compensation that
2 would have been awarded to the defendant, then the interest shall
3 be computed on the amount of the award. If no determination is
4 ever made, then the interest shall be computed on the probable
5 amount of compensation as determined by the court.

6 (e) The serving of a notice pursuant to this section constitutes
7 a waiver by operation of law, conditioned upon subsequent
8 deposit by the plaintiff of the probable amount of compensation,
9 of all claims and defenses in favor of the defendant except his
10 claim for greater compensation.

11 (f) Notice of a deposit made under this section shall be served
12 as provided by subdivision (a) of Section 1255.020. The
13 defendant may withdraw the deposit as provided in Article 2
14 (commencing with Section 1255.210.).

15 (g) No notice may be served by a defendant under subdivision
16 (a) after entry of judgment unless the judgment is reversed,
17 vacated, or set aside and no other judgment has been entered at
18 the time the notice is served.

19 SEC. 3. Section 1255.410 of the Code of Civil Procedure is
20 amended to read:

21 1255.410. (a) At the time of filing the complaint or at any
22 time after filing the complaint and prior to entry of judgment, the
23 plaintiff may apply to the court for an order for possession under
24 this article, demonstrating that the plaintiff is entitled to take the
25 property by eminent domain and has deposited pursuant to
26 Article 1 (commencing with Section 1255.010) an amount that
27 satisfies the requirements of that article.

28 The application shall describe the property of which the
29 plaintiff is seeking to take possession, which description may be
30 by reference to the complaint, and shall state the date after which
31 the plaintiff is seeking to take possession of the property.

32 (b) The plaintiff shall serve a copy of the application on the
33 record owner of the property and on the occupants, if any. If the
34 property is lawfully occupied by a person dwelling thereon or by
35 a farm or business operation, service shall be made not less than
36 120 days prior to the time possession is sought pursuant to the
37 application. In all other cases, service shall be made not less than
38 60 days prior to the time possession is sought pursuant to the
39 application.

1 (c) Not later than 30 days after service of the plaintiff's
2 application seeking to take possession of the property, any
3 defendant or occupant of the property may contest the application
4 and seek a hearing on the application.

5 (d) The court may make an order for possession of the
6 property, as the court deems appropriate under the circumstances
7 of the case, except as provided in subdivision (e), if the court
8 finds all of the following:

9 (1) The plaintiff is entitled to take the property by eminent
10 domain.

11 (2) The plaintiff has deposited pursuant to Article 1
12 (commencing with Section 1255.010) an amount that satisfies the
13 requirements of that article.

14 (3) The plaintiff has an urgent need for possession of the
15 property and that possession will not displace or unreasonably
16 affect any person in actual and lawful possession of the property
17 to be taken or the larger parcel of which it is a part.

18 (e) If the requirements of subdivision (d) are met, but the court
19 determines that it will cause a hardship to the defendant or
20 occupant for possession to be taken at the time specified in the
21 application, the court may decline to issue the order for
22 possession, or the court may issue an order of possession with a
23 different date of possession or an order of possession containing
24 terms and conditions limiting its operation, unless it determines,
25 upon consideration of all relevant facts (including the schedule or
26 plan of operation for execution of the public improvement and
27 the situation of the property with respect to the schedule or plan),
28 both of the following:

29 (1) The plaintiff needs possession of the property within the
30 time specified in the order for possession.

31 (2) The hardship the plaintiff would suffer as a result of the
32 denial or limitation of the action would be substantial.

33 SEC. 4. Section 1255.420 of the Code of Civil Procedure is
34 repealed.

35 SEC. 5. Section 1255.430 of the Code of Civil Procedure is
36 repealed.

37 SEC. 6. Section 1255.450 of the Code of Civil Procedure is
38 amended to read:

39 1255.450. (a) As used in this section, "record owner" means
40 the owner of the legal or equitable title to the fee or any lesser

1 interest in property as shown by recorded deeds or other recorded
2 instruments.

3 (b) The plaintiff shall serve a copy of the order for possession
4 issued under Section 1255.410 on the record owner of the
5 property and on the occupants, if any. If the property is lawfully
6 occupied by a person dwelling thereon or by a farm or business
7 operation, service shall be made not less than 90 days prior to the
8 time possession is to be taken pursuant to the order. In all other
9 cases, service shall be made not less than 30 days prior to the
10 time possession is to be taken pursuant to the order. Service may
11 be made with or following service of summons.

12 (c) At least 30 days prior to the time possession is taken
13 pursuant to an order for possession made pursuant to Section
14 1255.040, 1255.050, or 1255.460, the plaintiff shall serve a copy
15 of the order on the record owner of the property and on the
16 occupants, if any.

17 (d) Service of the order shall be made by personal service
18 except that:

19 (1) If the person on whom service is to be made has previously
20 appeared in the proceeding or been served with summons in the
21 proceeding, service of the order may be made by mail upon that
22 person and his or her attorney of record, if any.

23 (2) If the person on whom service is to be made resides out of
24 the state, or has departed from the state or cannot with due
25 diligence be found within the state, service of the order may be
26 made by registered or certified mail addressed to that person at
27 his or her last known address.

28 (e) A single service upon or mailing to one of several persons
29 having a common business or residence address is sufficient.

30 SEC. 7. Section 1255.460 of the Code of Civil Procedure is
31 amended to read:

32 1255.460. An order for possession issued pursuant to Section
33 1255.410 shall:

34 (a) Recite that it has been made under this section.

35 (b) Describe the property to be acquired, which description
36 may be by reference to the complaint.

37 (c) State the date after which plaintiff is authorized to take
38 possession of the property.

39 SEC. 8. Section 1263.025 is added to the Code of Civil
40 Procedure, to read:

1 1263.025. A public entity that exercises the power of eminent
2 domain shall offer to pay the reasonable costs of an independent
3 appraisal ordered by the owner of the property. The independent
4 appraisal shall be conducted by an appraiser licensed by the
5 Department Office of Real Estate Appraisers.

6 SEC. 9. Section 1091.6 is added to the Government Code, to
7 read:

8 ~~1091.6. A member of the governing board of a public entity~~
9 ~~shall not vote on any matter affecting an organization that has an~~
10 ~~interest in, or to which the public entity may transfer an interest~~
11 ~~in, property taken through eminent domain proceedings by that~~
12 ~~public entity and on whose board of directors the member sits.~~

13 *1091.6. An officer who is also a member of the governing*
14 *body of an organization that has an interest in, or to which the*
15 *public agency may transfer an interest in, property that the*
16 *public agency may acquire by eminent domain shall not vote on*
17 *any matter affecting that organization.*

18 SEC. 10. Section 33333.2 of the Health and Safety Code is
19 amended to read:

20 33333.2. (a) A redevelopment plan containing the provisions
21 set forth in Section 33670 shall contain all of the following
22 limitations. A redevelopment plan that does not contain the
23 provisions set forth in Section 33670 shall contain the limitations
24 in paragraph (4):

25 (1) (A) A time limit on the establishing of loans, advances,
26 and indebtedness to be paid with the proceeds of property taxes
27 received pursuant to Section 33670 to finance in whole or in part
28 the redevelopment project, which may not exceed 20 years from
29 the adoption of the redevelopment plan, except by amendment of
30 the redevelopment plan as authorized by subparagraph (B). This
31 limit, however, shall not prevent agencies from incurring debt to
32 be paid from the Low and Moderate Income Housing Fund or
33 establishing more debt in order to fulfill the agency's housing
34 obligations under subdivision (a) of Section 33333.8. The loans,
35 advances, or indebtedness may be repaid over a period of time
36 longer than this time limit as provided in this section. No loans,
37 advances, or indebtedness to be repaid from the allocation of
38 taxes shall be established or incurred by the agency beyond this
39 time limitation. This limit shall not prevent agencies from
40 refinancing, refunding, or restructuring indebtedness after the

1 time limit if the indebtedness is not increased and the time during
2 which the indebtedness is to be repaid is not extended beyond the
3 time limit to repay indebtedness required by this section.

4 (B) The time limitation established by subparagraph (A) may
5 be extended only by amendment of the redevelopment plan after
6 the agency finds, based on substantial evidence, that (i)
7 significant blight remains within the project area; and (ii) this
8 blight cannot be eliminated without the establishment of
9 additional debt. However, this amended time limitation may not
10 exceed 30 years from the effective date of the ordinance adopting
11 the redevelopment plan, except as necessary to comply with
12 subdivision (a) of Section 33333.8.

13 (2) A time limit, not to exceed 30 years from the adoption of
14 the redevelopment plan, on the effectiveness of the
15 redevelopment plan. After the time limit on the effectiveness of
16 the redevelopment plan, the agency shall have no authority to act
17 pursuant to the redevelopment plan except to pay previously
18 incurred indebtedness and to enforce existing covenants or
19 contracts, unless the agency has not completed its housing
20 obligations pursuant to subdivision (a) of Section 33333.8, in
21 which case the agency shall retain its authority to implement
22 requirements under subdivision (a) of Section 33333.8, including
23 its ability to incur and pay indebtedness for this purpose, and
24 shall use this authority to complete these housing obligations as
25 soon as is reasonably possible.

26 (3) A time limit, not to exceed 45 years from the adoption of
27 the redevelopment plan, to repay indebtedness with the proceeds
28 of property taxes received pursuant to Section 33670. After the
29 time limit established pursuant to this paragraph, an agency may
30 not receive property taxes pursuant to Section 33670, except as
31 necessary to comply with subdivision (a) of Section 33333.8.

32 (4) A time limit, not to exceed 12 years from the adoption of
33 the redevelopment plan, for commencement of eminent domain
34 proceedings to acquire property within the project area. This time
35 limitation may be extended only by amendment of the
36 redevelopment plan. ~~If the plan is extended for the purpose of~~
37 ~~exercising the power of eminent domain and the agency seeks to~~
38 ~~exercise its eminent domain authority, the agency shall adopt a~~
39 ~~resolution of necessity pursuant to Article 2 (commencing with~~
40 ~~Section 1245.210) of Chapter 4 of the Code of Civil Procedure~~

1 ~~that makes both of the following findings, based on substantial~~
2 ~~evidence in the record:~~

3 ~~(A) Substantial blight still exists within the project area.~~

4 ~~(B) The acquisition of the parcel is necessary for and will~~
5 ~~directly and substantially assist in eradicating the remaining~~
6 ~~blight. redevelopment plan after the agency finds, based on~~
7 ~~substantial evidence, both of the following:~~

8 ~~(A) That significant blight remains within the project area.~~

9 ~~(B) That this blight cannot be eliminated without the use of~~
10 ~~eminent domain.~~

11 (b) If a redevelopment plan is amended to add territory, the
12 amendment shall contain the time limits required by this section.

13 (c) When an agency is required to make a payment pursuant to
14 Section 33681.9, the legislative body may amend the
15 redevelopment plan to extend the time limits required pursuant to
16 paragraphs (2) and (3) of subdivision (a) by one year by adoption
17 of an ordinance. In adopting this ordinance, neither the legislative
18 body nor the agency is required to comply with Section 33354.6,
19 Article 12 (commencing with Section 33450), or any other
20 provision of this part relating to the amendment of
21 redevelopment plans.

22 (d) When an agency is required pursuant to Section 33681.12
23 to make a payment to the county auditor for deposit in the
24 county's Educational Revenue Augmentation Fund created
25 pursuant to Article 3 (commencing with Section 97) of Chapter 6
26 of Part 0.5 of Division 1 of the Revenue and Taxation Code, the
27 legislative body may amend the redevelopment plan to extend the
28 time limits required pursuant to paragraphs (2) and (3) of
29 subdivision (a) by the following:

30 (1) One year for each year in which a payment is made, if the
31 time limit for the effectiveness of the redevelopment plan
32 established pursuant to paragraph (2) of subdivision (a) is 10
33 years or less from the last day of the fiscal year in which that
34 payment is made.

35 (2) One year for each year in which a payment is made, if both
36 of the following apply:

37 (A) The time limit for the effectiveness of the redevelopment
38 plan established pursuant to paragraph (2) of subdivision (a) is
39 more than 10 years but less than 20 years from the last day of the
40 fiscal year in which a payment is made.

1 (B) The legislative body determines in the ordinance adopting
2 the amendment that, with respect to the project, all of the
3 following apply:

4 (i) The agency is in compliance with the requirements of
5 Section 33334.2 or 33334.6, as applicable.

6 (ii) The agency has adopted an implementation plan in
7 accordance with the requirements of Section 33490.

8 (iii) The agency is in compliance with subdivisions (a) and (b)
9 of Section 33413, to the extent applicable.

10 (iv) The agency is not subject to sanctions pursuant to
11 subdivision (e) of Section 33334.12 for failure to expend,
12 encumber, or disburse an excess surplus.

13 (3) This subdivision shall not apply to any redevelopment plan
14 if the time limits for the effectiveness of the redevelopment plan
15 established pursuant to paragraph (2) of subdivision (a) is more
16 than 20 years after the last day of the fiscal year in which a
17 payment is made.

18 (4) The legislative body by ordinance may adopt the
19 amendments provided for under this subdivision following a
20 public hearing. Notice of the public hearing shall be mailed to the
21 governing body of each of the affected taxing entities at least 30
22 days prior to the hearing. Notice shall also be published in a
23 newspaper of general circulation in the community at least once,
24 not less than 10 days prior to the date of the public hearing. The
25 ordinance shall contain a finding of the legislative body that
26 funds used to make a payment to the county's Educational
27 Revenue Augmentation Fund pursuant to Section 33681.12
28 would otherwise have been used to pay the costs of projects and
29 activities necessary to carry out the goals and objectives of the
30 redevelopment plan. In adopting an ordinance pursuant to this
31 subdivision, neither the legislative body nor the agency is
32 required to comply with Section 33354.6, Article 12
33 (commencing with Section 33450), or any other provision of this
34 part.

35 (e) This section shall apply only to redevelopment projects for
36 which a final redevelopment plan is adopted pursuant to Article 5
37 (commencing with Section 33360) on or after January 1, 1994,
38 and to amendments that add territory and that are adopted on or
39 after January 1, 1994.

1 *SEC. 11. Section 33392.5 is added to the Health and Safety*
2 *Code, to read:*

3 *33392.5. After the expiration of the time limit for the*
4 *commencement of eminent domain proceedings to acquire*
5 *property within the project area that was initially established*
6 *pursuant to paragraph (4) of subdivision (a) of Section 33333.2*
7 *and after the extension of that time limitation by an amendment*
8 *to the redevelopment plan, an agency shall not acquire property*
9 *unless the agency finds, based on substantial evidence, both of*
10 *the following:*

11 *(A) That significant blight remains within the project area.*
12 *(B) That this blight cannot be eliminated without the use of*
13 *eminent domain to acquire that property.*